

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 829**

**Introduced by Assembly Member Daucher**

February 18, 2005

---

An act to ~~amend Section 56501~~ *add and repeal Section 56509* of the Education Code, relating to special education, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 829, as amended, Daucher. Special education: due process rights: hearings.

*Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program developed by an individualized education program team, as specified.*

~~Existing law provides various due process rights to a parent or guardian of a special education pupil.~~

Existing law requires each noneducational and educational agency that provides education, related services, or both, to children who are individuals with exceptional needs, to provide various procedural safeguards under the federal Individuals with Disabilities Education

Act, including, but not limited to, the right to a due process hearing in specified circumstances.

~~Under existing law, among these procedural safeguards are due process hearing procedures, as specified.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

*This bill would establish a 5-year alternate dispute resolution pilot program, to include each special education local plan area in Orange County, as specified. The bill would appropriate from the General Fund to the Superintendent the sum of \$150,000 per year for 5 years for allocation to the county office of education of the County of Orange for the purpose of the bill.*

*This bill would make legislative findings and declarations regarding the need for special legislation.*

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The Legislature finds and declares all of the
- 2     following:
- 3     (a) The number of due process hearings to resolve issues
- 4     regarding pupils with disabilities has increased in recent years.
- 5     (b) The increase in the number of due process hearings has
- 6     resulted in an increase in litigation costs.
- 7     (c) Using an alternative dispute resolution process will
- 8     provide a quicker resolution to issues regarding services and
- 9     placement for pupils with disabilities.
- 10    (d) School districts will realize a significant cost savings by
- 11    using an alternative dispute resolution process, freeing more
- 12    money to provide special education services to pupils.
- 13    (e) School districts should be encouraged to adopt an
- 14    alternative dispute resolution process.
- 15    (f) The 2004 reauthorization of the federal Individuals with
- 16    Disabilities Education Act requires that a resolution meeting be
- 17    held, prior to a due process hearing, with individualized
- 18    education program team members and a designee of
- 19    superintendent of Public Instruction who has the authority to
- 20    commit school district resources.

1     (g) *To make this resolution meeting as productive as possible,*  
2 *team members should be trained in alternative dispute resolution*  
3 *procedures.*

4     SEC. 2. *Section 56509 is added to the Education Code, to*  
5 *read:*

6     56509. (a) *There is hereby created a five-year alternate*  
7 *dispute resolution pilot program, to include each special*  
8 *education local plan area in Orange County, and to be*  
9 *administered by the Superintendent.*

10    (b) *The program administrator shall ensure all of the*  
11 *following:*

12    (1) *All school district employees who participate in*  
13 *individualized education program team meetings shall be trained*  
14 *in all of the following:*

15    (A) *Techniques on the manner in which to prepare for*  
16 *individualized education program team meetings.*

17    (B) *The manner in which to conduct effective meetings.*

18    (C) *The manner in which to structure meetings in a way that*  
19 *promotes effective communication.*

20    (D) *The manner in which to improve communication skills,*  
21 *including the ability to read nonverbal cues.*

22    (E) *The manner in which to resolve issues using interest-based*  
23 *problem solving techniques.*

24    (2) *Mediation panels, consisting of parent-administrator*  
25 *teams, shall be trained in interest-based problem solving and*  
26 *mediation techniques. Mediation panel members shall be*  
27 *required to earn a certificate from a local institution of higher*  
28 *education that has developed a program for educational*  
29 *mediation. Panels shall provide mediation for issues outside of*  
30 *their home school district or special education local plan area.*

31    (3) *An ombudsperson from outside the school district or*  
32 *special education local plan area who is well-versed in special*  
33 *education laws and regulations shall complete the training*  
34 *specified in paragraphs (1) and (2), or shall be required to have*  
35 *comparable training or experience.*

36    (c) (1) *If an issue cannot be resolved by the individualized*  
37 *education program team, the school district employee members*  
38 *of which have been trained pursuant to paragraph (1) of*  
39 *subdivision (b), the issue shall be submitted for resolution, upon*

1 agreement of the parties, to a mediation panel as described in  
2 paragraph (2) of subdivision (b).

3 (2) If the issue cannot be resolved by the mediation panel, the  
4 members of which have been trained pursuant to paragraph (2)  
5 of subdivision (b), the issue shall be submitted for resolution,  
6 upon agreement of the parties, to the ombudsperson.

7 (3) If the issue cannot be resolved, to the satisfaction of the  
8 parties, by the ombudsperson, the procedures of this part are  
9 applicable.

10 (d) There is hereby appropriated from the General Fund to the  
11 Superintendent the sum of one hundred fifty thousand dollars  
12 (\$150,000) per year for five years, for allocation to the county  
13 office of education of the County of Orange for the purposes of  
14 this section.

15 (e) This section shall be inoperative on July 1, 2011, and as of  
16 January 1, 2012, is repealed, unless a later enacted statute, that  
17 becomes operative on or before January 1, 2012, deletes or  
18 extends the dates on which it becomes inoperative and is  
19 repealed.

20 SEC. 3. Due to the unique circumstances concerning the  
21 County of Orange, the Legislature finds and declares that a  
22 general statute cannot be made applicable within the meaning of  
23 Section 16 of Article IV of the Constitution. Therefore, this act is  
24 necessarily applicable only to the County of Orange.

25 ~~SECTION 1. Section 56501 of the Education Code is~~  
26 ~~amended to read:~~

27 ~~56501. (a) The due process hearing procedures prescribed by~~  
28 ~~this chapter extend to the parent or guardian, as defined in~~  
29 ~~Section 56028, a pupil who has been emancipated, and a pupil~~  
30 ~~who is a ward or dependent of the court or for whom no parent or~~  
31 ~~guardian can be identified or located when the hearing officer~~  
32 ~~determines that either the local educational agency has failed to~~  
33 ~~appoint a surrogate parent as required by Section 7579.5 of the~~  
34 ~~Government Code or the surrogate parent appointed by the local~~  
35 ~~educational agency does not meet the criteria set forth in~~  
36 ~~subdivision (f) of Section 7579.5 of the Government Code, and~~  
37 ~~the public education agency involved in any decisions regarding~~  
38 ~~a pupil. The appointment of a surrogate parent after a hearing has~~  
39 ~~been requested by the pupil shall not be cause for dismissal of the~~  
40 ~~hearing request. The parent or guardian and the public education~~

1 ~~agency involved may initiate the due process hearing procedures~~  
2 ~~prescribed by this chapter under any of the following~~  
3 ~~circumstances:~~

4 ~~(1) There is a proposal to initiate or change the identification,~~  
5 ~~assessment, or educational placement of the child or the~~  
6 ~~provision of a free, appropriate public education to the child.~~

7 ~~(2) There is a refusal to initiate or change the identification,~~  
8 ~~assessment, or educational placement of the child or the~~  
9 ~~provision of a free, appropriate public education to the child.~~

10 ~~(3) The parent or guardian refuses to consent to an assessment~~  
11 ~~of the child.~~

12 ~~(4) There is a disagreement between a parent or guardian and~~  
13 ~~a district, special education local plan area, or county office~~  
14 ~~regarding the availability of a program appropriate for the child,~~  
15 ~~including the question of financial responsibility, as specified in~~  
16 ~~subsection (b) of Section 300.403 of Title 34 of the Code of~~  
17 ~~Federal Regulations.~~

18 ~~(b) The due process hearing rights prescribed by this chapter~~  
19 ~~include, but are not limited to, all the following:~~

20 ~~(1) The right to a mediation conference pursuant to Section~~  
21 ~~56500.3.~~

22 ~~(2) The right to request a mediation conference at any point~~  
23 ~~during the hearing process. The mediation process is not to be~~  
24 ~~used to deny or to delay a parent's or guardian's right to a due~~  
25 ~~process hearing, or to deny any other rights afforded under this~~  
26 ~~part, or under the Individuals with Disabilities Education Act (20~~  
27 ~~U.S.C. Sec. 1400 et seq.). Notwithstanding subdivision (a) of~~  
28 ~~Section 56500.3, attorneys and advocates are permitted to~~  
29 ~~participate in mediation conferences scheduled after the filing of~~  
30 ~~a request for due process hearing.~~

31 ~~(3) The right to examine pupil records pursuant to Section~~  
32 ~~56504. This provision shall not be construed to abrogate the~~  
33 ~~rights prescribed by Chapter 6.5 (commencing with Section~~  
34 ~~49060) of Part 27.~~

35 ~~(4) The right to a fair and impartial administrative hearing at~~  
36 ~~the state level, before a person knowledgeable in the laws~~  
37 ~~governing special education and administrative hearings, under~~  
38 ~~contract with the department, pursuant to Section 56505.~~

39 ~~(c) In addition to the rights prescribed by subdivision (b), the~~  
40 ~~parent or guardian has the following rights:~~

- 1     ~~(1) The right to have the pupil who is the subject of the state~~
- 2     ~~hearing present at the hearing.~~
- 3     ~~(2) The right to open the state hearing to the public.~~